

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, DC 20530

December 11, 2001

J. Lane Greenlee, Esq.
P.O. Box 430
Winona, Mississippi 38967-0430

Dear Mr. Greenlee:

This refers to the cancellation of the June 5, 2001, general election for the Town of Kilmichael in Montgomery County, Mississippi, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your response to our September 21, 2001, request for additional information on October 12, 2001; supplemental information was received on November 26 and 27, 2001.

We have considered carefully the information you have provided, as well as census data, and comments and information from other interested parties. As discussed further below, I cannot conclude that the town's burden under Section 5 has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the cancellation of the June 5, 2001, general election.

According to the 2000 Census, the Town of Kilmichael has a population of 830, of whom 52.4 percent are black. Since 1990, black residents have become a majority of the town's population and, recently, a majority of its registered voters.

The town is governed by a mayor and a five-member Board of Aldermen, all of whom are elected at the same time to four-year terms, under an at-large system with a plurality vote requirement. Currently, the mayor and all five board members are white. Only one black person has served on the board; in fact, since 1965, only four other black candidates have ever run for board positions. None of these four was successful. Until 2001, no black person had sought the office of mayor.

The office of mayor and all board seats were to be filled at the June 5, 2001, general election. During the qualification period for this election, for the first time a significant number of black candidates qualified for both races. In the Board of Aldermen race, there were ten candidates running for the five board positions, four of whom were black. In the mayoral race, three individuals, one of whom was

African American, qualified. Three weeks before the election, and following the close of candidate qualification, the town sought to cancel the election. On May 15, 2001, with no notice to the community, the board unanimously voted to cancel the general election. The town obtained approval from the town election commission and from a state circuit court for this action. In the Matter of the General Election for Mayor and Aldermen of the Town of Kilmichael of June 2001, Case No. 2001-0073CV-L (Cir. Ct. Montgomery Cty. Miss. May 21, 2001). The following day, the town advised the candidates of the court's decision and provided them with copies of the court order.

The stated purpose for the town's action was to develop a single-member ward system for electing town officials. However, our analysis of the information provided by the town, taken as a whole, has caused us to conclude that the town has not established that its decision was motivated by reasons other than an intent to cause retrogression in minority voting strength.

A significant factor in our analysis is the context in which the town reached its decision. First, the decision to cancel the election came only after black persons had become a majority of the registered voters and the release of census data indicated that black persons were now a majority of the population in the town. Second, the decision occurred only after the qualification period for the election had closed, and it became evident that there were several black candidates for office, and that under the existing at-large electoral method, the minority community had the very strong potential to win a majority of municipal offices, including mayor.

The town's purported non-racial rationales for the decision do not withstand scrutiny. First, the town points to a conversation, which occurred in February or March of this year, between former aldermanic candidate Robert Hamer and one of the current board members. However, there is no evidence that Mr. Hamer advocated any change in the upcoming election date. Furthermore, the minutes of the March 6, 2001, meeting in which Mr. Hamer's request is noted reflect the board's position not only that a decision on the change could be postponed, but also that any discussion on the change was not of immediate import. It thus appears that the board did not focus on changing the method of election until it became clear that the minority community potentially could win the mayoral seat as well as four of the five aldermanic seats.

Second, the town points to federal litigation filed in April as a reason to cancel the election. One aspect of that litigation concerned the effect that the recent release of the census data would have on the municipalities that elected its governing bodies from districts. Mississippi State Conference, NAACP v. Amory, Mississippi, Civil Action No. 01-CV-98 (N.D. Miss. Apr. 25, 2001). However, that part of the litigation had no relevance to the town's existing at-large method of election. The litigation also alleged that the at-large method of election violated federal law in several other identified municipalities, but Kilmichael was not named as a defendant or a potential defendant in the litigation. Thus there was no imminent danger of litigation that would lead the town to cancel the election. Finally, we note that election-related federal litigation has been occurring in Mississippi for approximately 30 years.

In addition to the town's failure to establish the absence of a discriminatory purpose, we have concluded

that it also has failed to establish that the change does not have a prohibited effect under Section 5. Canceling an election in which the minority community would be able to exercise effectively the electoral franchise - especially one in which there is a significant number of minority candidates qualified for office and black voters are a majority of registered voters - is retrogressive. Had the election been held, blacks would have exercised the opportunity to attempt to elect candidates of their choice to the mayoral and board seats. The cancellation of this election leaves black citizens worse off because of the denial of that opportunity.

Under the Voting Rights Act, a jurisdiction seeking to implement a proposed change affecting voting must establish that, in comparison with the benchmark standard, the change does not "lead to a retrogression" in the position of minority voters with respect to the "effective exercise of the electoral franchise." See Beer v. United States, 425 U.S. 130, 141 (1976). In addition, the jurisdiction must establish that the change was not adopted with an intent to retrogress. Reno v. Bossier Parish School Board, 528 U.S. 320, 340 (2000). The submitting authority has the burden of demonstrating that the proposed change has neither the prohibited purpose nor effect. Id. at 328; see also Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the cancellation of the June 5, 2001, general election.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the change continues to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the Town of Kilmichael plans to take concerning this matter. If you have any questions, you should call Mr. David H. Harris, Jr. (202-305-2319), an attorney in the Voting Section. Refer to File No. 2001-2130 in any response to this letter so that your correspondence will be channeled properly.

Sincerely,

Ralph F. Boyd, Jr.
Assistant Attorney General
Civil Rights Division